MONTANA LEGISLATIVE HISTORY

Chapter 611 19 89

Bill H _____ S 363 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 16	✓ C	Hearing Date(s)	Feb 13	✓ C
		C		Feb 15	✓ C
		C			C
		C			C
Date Out	Mar 16	✓ C		Feb 16	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Free Conference Committee

Apr 05 ✓ C

2/14	HEARING		
2/14	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

SB 363 INTRODUCED BY CRIPPEN
REMOVE DOLLAR LIMIT ON ARBITRATION OF PROPERTY CONTRACTS

2/07	INTRODUCED		
2/07	REFERRED TO JUDICIARY		
2/13	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED		
2/18	2ND READING PASSED	49	1
2/21	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
2/22	REFERRED TO JUDICIARY		
3/16	HEARING		
3/16	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	92	3
3/29	3RD READING CONCURRED	93	4
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS NOT CONCURRED	50	0
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/06	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
	HOUSE		
4/06	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	90	7
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	94	2
4/15	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 611 EFFECTIVE DATE: 10/01/89		

SB 364 INTRODUCED BY THAYER
REQUIRE INSURERS TO GIVE NOTICE OF CANCELLATION OR REFUSAL TO RENEW DISABILITY INSURANCE POLICY FOR REASONS OTHER THAN PREMIUM NONPAYMENT

2/07	INTRODUCED		
2/07	REFERRED TO BUSINESS & INDUSTRY		
2/10	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	50	0
2/17	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		

SENATE BILL NO. 363

INTRODUCED BY CRIPPEN

IN THE SENATE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 17, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 45; NOES, 5.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 16, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 93; NOES, 4.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1989	SECOND READING, AMENDMENTS NOT

	CONCURRED IN.
APRIL 4, 1989	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 6, 1989	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 6, 1989	FREE CONFERENCE COMMITTEE REPORTED.
	IN THE HOUSE
APRIL 7, 1989	FREE CONFERENCE COMMITTEE REPORTED.
APRIL 11, 1989	SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE SENATE
APRIL 11, 1989	SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
APRIL 13, 1989	THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

INTRODUCED BY _____ BILL NO. 363

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PARTIES TO A CONTRACT FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT TO AGREE TO SUBMIT ANY FUTURE CONTRACTUAL DISPUTES TO ARBITRATION, REGARDLESS OF THE DOLLAR AMOUNT OF THE CONTRACT; DELETING THE DOLLAR AMOUNT LIMITATION FOR CONTRACTS THAT MAY CONTAIN SUCH ARBITRATION AGREEMENTS; AND AMENDING SECTION 27-5-114, MCA. "

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-5-114, MCA, is amended to read:

"**27-5-114. Validity of arbitration agreement -- exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

~~(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and~~

~~(d)~~(c) claims for workers' compensation.

(3) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

-End-

INTRODUCED BILL
SB 363

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 13, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail.

Members Excused: Loren Jenkins

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 367

Presentation and Opening Statement by Sponsor: Senator Jerry Noble of Great Falls, District 21, opened the hearing saying the bill was requested by the Montana County Attorneys Association because there was no statutory direction for law enforcement officers or prosecutors in certain cases. A law was needed specifying how the items of property seized as evidence were to be handled after the case is closed, or after the decision has been made not to file charges. Different jurisdictions have different means of disposing of unnecessary evidence, he told the committee. Questions continually arise about how to disburse of such evidence. This bill will provide uniform statewide procedure that will allow for judicial review on the disposition of this property. It also allows law enforcement with an opportunity to obtain a court order specifying when the property may be used for training or enforcement purposes.

Senator Yellowtail asked Mr. Connor to expand on p.3, line 8. Mr. Connor said that a person might be growing marijuana on a farm in Cascade County and the proceeds are maintaining a ranch in Ravalli County. The bill would allow for the forfeiture of the Ravalli County Ranch, if it could be shown that the proceeds were being used to purchase or maintain it. Drug money is being made and, essentially, laundered.

Senator Yellowtail asked why the federal law did not contain the same language. Mr. Connor didn't know.

Closing by Sponsor: Senator Gage said we should not jeopardize the broadness of the bill and forfeit federal participation because of it. He specifically wanted to prohibit farm and ranch operations from being illegal drug operations. He urged passage of the bill.

At this point, Chairman Crippen had to present the next bill in the hearing. V. Chairman Bishop took the chair.

HEARING ON SENATE BILL 363

Presentation and Opening Statement by Sponsor: Senator Bruce Crippen of Billings, District 45, opened the hearing stating that the purpose of the bill was to allow parties to a contract for the acquisition of real or personal property, services, or money or credit to agree to submit any future contractual disputes to arbitration, regardless of the dollar amount of the contract; deleting the dollar amount limitation for contracts that may contain such arbitration agreements. The act removes the limit of $35,000 for future contractural disputes for arbitration. In 1985, Montana adopted the arbitration act with a $35,000 limit on certain actions involving money. Since then, it has been discovered that there are many cases before the district court having this amount of money or less.

List of Testifying Proponents and What Group they Represent:

Judge Charles Sande of Billings, himself
Lew Penwell of Billings, himself

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Testimony:

Judge Sande said the bill wasn't designed to solve all problems but it would provide early settlement in many cases. It is very important that the lawyers notice that the courts are being bogged down with criminal matters. Civil cases going through district court and then through the supreme court take from 20 to 24 months. By changing the dollar amount for arbitration, many costs will be eliminated. Many lawyers are hesitant to use arbitration because, if they are not successful, the client might not be happy. If the dollar amount is changed, lawyers are more likely to use arbitration. Even if it is changed, it will be some time before it is used frequently. Many nearby states have the provision and it is being used successfully, he said.

Lew Penwell said he conducted an independent arbitration and mediation service in Billings. He agreed that arbitration would prove to eliminate the crowded court problem. Throughout the country, the alternate dispute resolution is proving more and more popular. This past year, Colorado amended their arbitration act to provide that amounts less than $50,000 be arbitrated before they are litigated. It points out that the smaller claims are creating the problems, he said, and are exactly the ones that should be arbitrated. When two parties wish to put into a contract that any future dispute be arbitrated, the state should not be legislating away their right to do so, he said. The option should be left open. The section is not in the federal act, and he felt it should not be in the Montana act.

Michael Sherwood appeared in opposition to the bill. He presented written testimony for the record (Exhibit 1). He said that Carl Englund of the MTLA originally talked the legislature into the $35,000 limit. He was concerned that unsophisticated parties would be dealing with sophisticated parties. The $35,000 was an artificial number decided upon and was an expression of the opinion that arbitration should be limited to sophisticated parties. Anyone can opt into arbitration now, he said. The agreement, he felt would waive the right to a jury, the judicial system and judicial review and go to binding arbitration. He was concerned that Section 27-5-211 stipulated that "binding arbitration" was

binding. He felt that an unsophisticated person might be at a disadvantage in the future. He supported Judge Sande's view regarding clogged courts and also approved of arbitration, but hoped the committee would take a look at his objection.

Questions From Committee Members: Senator Mazurek asked why it was necessary to do away with the limitation. Anything can be submitted to arbitration, he commented. Mr. Penwell said, for example, that two parties have entered a contract and are in a dispute, the present law may prevent them from using arbitration at a future time.

Senator Mazurek said the $35,000 limit was not in the original bill, but was added so that every contract didn't contain a provision that any future dispute had to be automatically submitted to arbitration. He asked if Mr. Penwell was saying, maybe that would still be OK to have some protection, but the presence of this language keeps parties from using arbitration even after the dispute arises. Mr. Penwell said yes, that there should be the option to use arbitration.

Closing by Sponsor: Senator Crippen said that Mr. Sherwood had brought up some valid points regarding the unsophisticated borrower. When parties enter arbitration on equal parity, that was equitable. But, if an unsophisticated person is faced with an attorney generally representing the creditor in court, he would be at a disadvantage. He thought this bill, providing arbitration out of court, could actually protect the unsophisticated party. He closed the hearing.

HEARING ON SENATE BILL 353

Presentation and Opening Statement by Sponsor: Senator Bruce Crippen of Billings, District 45, opened the hearing. He said the bill would allow local law enforcement agencies to request assistance from the national guard and tactical teams from other jurisdictions during tactical incidents. It would empower the governor to authorize the national guard assistance and create a vehicle tax to fund situations demanding such assistance. In cases such as the Dan and Don Nichols incident and the Holter Lake Ambush would have ended much sooner, had national guard and a

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-13-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			✓
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-13-89
BILL NO. SB363

(This sheet to be used by those testifying on a bill.)

NAME: Michael Sherwood DATE: 2-13-89

ADDRESS:

PHONE:

REPRESENTING WHOM? MTLA

APPEARING ON WHICH PROPOSAL: SB 363

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: The jury system has its place in commercial litigation. It does however have its pluses and minuses:

Pluses: (1) Access w/ minimal cost to an impartial fact finder
(2) Testing of evidentiary issues
(3) discovery
(4) Judicial Review

Minuses: Delay

The arbitration system also has its pluses and minuses:

(1) Speedy resolution of disputes
(2) Avoids deadlock (strikes) in labor disputes

Minuses: (1) Another party, usually a lawyer, at $400 - $500/day

Arbitration is currently an option in all cases. Future binding arbitration should be limited to sophisticated parties who can afford it.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on February 15, 1989, at 7:00 p.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Jenkins, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion:

There was none.

EXECUTIVE ACTION ON SENATE BILL 363

Discussion: It was the consensus of the committee that this bill had many problems including forced arbitration of all contract disputes and dollar limitation.

Senator Halligan moved SB 363 be TABLED.

Amendments and Votes: Before action had been taken on the tabling motion, Senator Pinsoneault moved to reinsert the stricken language of $15,000. The motion PASSED on a vote of 8 to 2, with Senators Crippen and Halligan voting no.

Recommendation and Vote: Senator Crippen moved to DO PASS AS AMENDED. The motion CARRIED with Senators Mazurek and Halligan voting no.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 363 (first reading copy -- white), respectfully report that SB 363 do pass.

DO PASS

Signed: _____
Bruce D. Crippen, Chairman

2/16/89
10:00 a.m.

13

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15-89 (evening) Senate Bill No. 363 Time

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Halligan Reconsider 9-1 Mazurek No
Do Pass Carried 8-2 Beck, Mazurek

SF-3 (Rev. 1987)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15 Senate Bill No. 363 Time

Evening meeting

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Pinsoneault Amend 8-2 Crippen Halligan

DPA 8-2 Maz Halligan

SF-3 (Rev. 1987)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 16, 1989, at 9:25 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: The House Judiciary Committee joined with the State Administration Committee to hear SB 196 sponsored by Sen. Yellowtail.

HEARING ON SENATE BILL 196

Presentation and Opening Statement by Sponsor: Sen. Bill Yellowtail, Senate District 50, Big Horn County, sponsored the bill. He said this bill recommends that the salaries for members of the bench in Montana should be increased for two fundamental reasons. First, judges should be paid a salary commensurate with their duties and responsibilities. Lawyers in Montana, the group from which judges are selected, earn about 30 percent more than judges do. Second, we must attract the best and the brightest to seek and attain a seat on the bench. Sen. Yellowtail said that our Constitution and our democracy are only as good as our judicial system. This bill serves two simple purposes. It separates the nonpartisan and partisan elected offices, and it increases the judicial salaries. He pointed out that Montana ranks last in the nation in the salaries we pay our Supreme Court justices and district judges, which is a disgrace to these people that we hold in such high esteem. In 1977, Montana ranked 42nd in salary offered to an associate Supreme Court justice and ranked 29th for salary offered to district court judges. For comparison, this year, New York pays the Supreme Court associate justice $115,000. SB 196 would bring Montana into the middle range of the surrounding states but substantially lower than the national average.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Hannah asked Mr. Miller to walk him through the procedure as to how they get into a position to file the warrant. Mr. Miller then did so. He further explained that to the extent they can find a continuing source of funds, whether from an employer or bank, they would be in a position to let that levy stand until it is satisfied or withdrawn by the Department.

Rep. Hannah asked what occurred with their assessment the money is due. Mr. Miller explained that with all of their notices of assessment, they are apprised of their right to protest the adjustment. If they do so, they are entitled to an informal or formal conference. If they are not satisfied with the result, they can appeal it to the State Tax Appeals Board and then on through the process--district court all the way to the supreme court. If a taxpayer protests the assessment, they stop the process.

Rep. Hannah asked if the warrant can be filed with the taxpayer is in the process of disputing the assessment. Mr. Miller responded they can but they don't.

Rep. Boharski asked if filing a lien to collect taxes is the same situation as we have here. The response was yes, it is the same situation, although there is a difference between filing a lien and executing or levying on a lien.

Closing by Sponsor: Sen. Crippen closed.

HEARING ON SENATE BILL 363

Presentation and Opening Statement by Sponsor: Sen. Bruce Crippen, Senate District 45, stated SB 363 deals with the arbitration statutes. In 1985, Montana adopted the American Arbitration Act but made one change--certain actions involving money matters of $35,000 or less were not subject to the act. Sen. Crippen stated the act deals with a written agreement to submit to arbitration any controversy arising between the parties after the contract is valid and enforceable. This has some exceptions. Sen. Crippen stated the bill eliminates the language dealing with $35,000 or less. One of the reasons behind this is to deal with the clogging of our courts and backlog of civil cases.

Testifying Proponents and Who They Represent:

Charles Sandy, Former District Judge
Lewis Penwell, Arbitration and Mediation Service Company
Michael Sherwood, Montana Trial Lawyers Assoc.

Proponents Testimony:

Charles Sandy, former District Judge, spoke in support of SB 363. Judge Sandy stated that the suggestion which Mike Sherwood will be making is completely acceptable to the proponents of this bill.

Lewis F. Penwell, Arbitration and Mediation Service Company, presented written testimony in support of SB 363 (EXHIBIT 8). Mr. Penwell stated he also supported the amendment to be submitted by Mike Sherwood.

Michael Sherwood, representing the Montana Trial Lawyers Association (MTLA), stated MTLA proposes the stricken language of the bill be retained except on line 7 the figure $35,000 be changed to $3,500. He indicated there is a clogging in the district court, but that clogging is not radical in the justice courts, and the justice court jurisdiction is $3,500. Mr. Sherwood also stated that with the smaller amount of money you get, the more chance there is for oppressive contracts. He did not feel there was a need for arbitration at that level when you have the alternative of small claims court or justice court.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Hannah asked why Montana should adopt anything different than the uniform act which the testimony indicates is working well in other states. He asked how we justified having anything different in this act. Sen. Crippen stated that in light of the lack of time, he was willing to compromise.

Closing by Sponsor: Sen. Crippen stated he would go along with the amendment as he felt the small claims court maximum was probably a very good one that could be reviewed at a later time.

DISPOSITION OF SENATE BILL 363

Motion: Representative Nelson moved SB 363 BE CONCURRED IN, motion seconded by Rep. Gould.

Discussion: Rep. Mercer stated you can always agree to arbitration after a dispute arises. Also, he was concerned that those entering into small contracts may not understand what it means to agree to arbitration.

Amendments, Discussion, and Votes: Rep. Mercer moved SB 363 be amended as follows:

Reinsert subsection (c)
Delete: "$35,000"
Insert: "$10,000"

This amendment essentially reinserts the language on lines 4 through 7 and change the figure to $10,000.

Rep. Rice stated that he had some concern with changing it to $10,000 as all the parties who testified were in agreement on the $3,500. Rep. Mercer felt this would better protect the people who were entering into contracts with people who did such things as home improvements and the $3,500 was too small.

The motion to amend SB 363 CARRIED with Rep. Rice opposing the motion.

Recommendation and Vote: Rep. Wyatt moved SB 363 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Boharski. Motion CARRIED unanimously.

HEARING ON SENATE BILL 353

Presentation and Opening Statement by Sponsor: Sen. Bruce Crippen, Senate District 45, stated SB 353 is an act which would allow local law enforcement agencies to request assistance from the National Guard and from tactical teams from other jurisdictions during tactical incidents. It would also allow and empower the governor to authorize National Guard assistance. Sen. Crippen related two incidents in multiple jurisdictions giving rise to the need for this bill--the Nichols manhunt and the Holter Lake incident. The bill sets forth various definitions as to a tactical incident, who can assist, and who is responsible. It does not make the National Guard peace officers.

Testifying Proponents and Who They Represent:

Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers Association
Captain Bill Fleiner, Lewis and Clark County Sheriff's Office

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 16, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

2

STANDING COMMITTEE REPORT

March 16, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 363 (third reading copy -- blue) be concurred in as amended .

Signed: Dave Brown
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 6.
Following: "CREDIT
Insert: "WHERE THE CONSIDERATION TO BE PAID BY THE INDIVIDUAL IS $10,000 OR LESS"

2. Title, lines 7 and 8.
Strike: ", REGARDLESS" on line 7 through "DELETING" line 8
Insert: "; CHANGING"

3. Page 1, following line 25.
Insert: "(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $10,000 or less;"
Renumber: subsequent sections

HOUSE
SB 363

21

EXHIBIT 8
DATE 3-16-89
HB SB 363

Arbitration and Mediation Service Company (AMSCO)
203 FRATT BUILDING 2817 2ND AVE. N.
BILLINGS, MONTANA 59101 (406) 245-6122

March 15, 1989

Mr. Dave Brown
Chairman, House Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: Senate Bill 363
Uniform Arbitration Act Amendment

Dear Mr. Chairman

I am the owner of AMSCO, a new Montana corporation. We have just recently organized to provide alternative dispute resolution services. We will provide a service to the legal and business community by making arbitration and mediation readily available for all types of disputes, ranging from domestic relations to business and commercial arguments.

It is no secret that our public court system is severly crowded. The problem is not unique to Montana; in fact several other states are in much worse shape. But only in Montana do we have a provision in the Uniform Arbitration Act that adds to the congestion. Senate Bill 363 will eliminate this problem.

In 1988 in the 13th Judicial Distric, which includes Yellowstone County, there were 458 criminal cases filed. At the same time there were 2857 civil cases filed. This creats a work load that is impossible for the five judges there to handle effectively. Criminal cases of course get priority, which means that civil cases get postponed. This can wreck havoc, for instance, on a business whose bond is jeopardized as a result of a pending litigation. It can also result in growing animosity between business associates that find themselves on oposate sides of a dispute.

Alternative dispute resolution is a recognized format that serves as a good substitute in a variety of cases. It is endorsed by the State Bar Association, as evidenced by the establishment of their ADR standing committee. It has received high praise from such notables in the legal profession as Max Hanson, President of the state bar, and Professor William Corbett of the University Law School, who teaches cources in mediation.

Section 27-5-114 (2) (c), which this bill addresses, makes it impossible for two parties to write into their contract that a small future dispute shall be arbitrated. No other state has such a provision, nor does the federal arbitration act contain any such language. Senate Bill 363 is a good piece of legislation because it gives back to the public the right to provide for arbitration in a contract in the event of a future dispute of $35,000 or less. We should not legislate away this right. I respectfully ask for your support of Senate Bill 363. Thank you.

Sincerely,

Lewis F. Penwell

VISITORS' REGISTER

JUDICIARY COMMITTEE

ILL NO. SENATE BILL 363 DATE MARCH 16, 1989

PONSOR SEN. CRIPPEN

AME (please print)	REPRESENTING	SUPPORT	OPPOSE
C B Sands		✓	
Lew Powell	AMSCO	✓	
Mike Sherwood	MTLA	✓	

YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL NO. 363

INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PARTIES TO A CONTRACT FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT WHERE THE CONSIDERATION TO BE PAID BY THE INDIVIDUAL IS $10,000 OR LESS TO AGREE TO SUBMIT ANY FUTURE CONTRACTUAL DISPUTES TO ARBITRATION~~,~~ ~~REGARDLESS OF THE DOLLAR AMOUNT OF THE CONTRACT, DELETING~~; CHANGING THE DOLLAR AMOUNT LIMITATION FOR CONTRACTS THAT MAY CONTAIN SUCH ARBITRATION AGREEMENTS; AND AMENDING SECTION 27-5-114, MCA. "

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-5-114, MCA, is amended to read:

"27-5-114. Validity of arbitration agreement -- exceptions. (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(B) ANY CONTRACT BY AN INDIVIDUAL FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT WHERE THE TOTAL CONSIDERATION TO BE PAID OR FURNISHED BY THE INDIVIDUAL IS $10,000 OR LESS;

~~(b)~~(C) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

~~(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and~~

~~(d)~~(c)(D) claims for workers' compensation.

(3) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

-End-

REFERENCE BILL

AS AMENDED

(71)

Free Conference Committee Report
on SB 363
Report No. 1, April 5, 1989

Mr President and Mr. Speaker:

We, your Free Conference Committee on SB 363 met and considered:

The House Committee on Judiciary amendments to SB 363 (third reading copy -- blue) dated March 16, 1989.

We recommend that SB 363 (reference copy -- salmon) be amended as follows:

1. Title, line 7.
Strike: "$10,000"
Insert: "$5,000"

2. Page 2, line 6.
Strike: "$10,000"
Insert: "$5,000"

And that this Conference Committee Report be adopted.

FOR THE SENATE

Sen. Crippen, Chairman

Sen. Bishop

Sen. Halligan

FOR THE HOUSE

Rep. Dave Brown

Rep. Strizich

Rep. Mercer

ADOPT

REJECT

SB 363

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REFERENCE BILL: Includes Free Conference Committee Report Dated 4-5-89